

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ADAN RODRIGUEZ LEON,

Defendant and Appellant.

G054854

(Super. Ct. No. 15CF0763)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Cheri T. Pham, Judge. Affirmed in part, reversed in part, and remanded with directions.

Carl Fabian, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Julie L. Garland, Assistant Attorney General, A. Natasha Cortina, Christine Levingston Bergman, Amanda E. Casillas, and Christopher P. Beesley, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

Adan Rodriguez Leon appeals from the judgment following his conviction on a single count of first degree murder. He contends the evidence was insufficient to support a finding that his killing of Paul Guzman was the product of premeditation. Leon also argues that his sentence must be reversed and the case remanded to allow the trial court to exercise its newly-conferred discretion to strike or dismiss Leon's charged enhancement for intentional discharge of a firearm causing death.

We are unpersuaded by the first contention. While Leon may not have had a definitive plan to kill Guzman when he arrived to confront him about his participation in a burglary at Leon's family home, the evidence was sufficient to support the inference Leon had decided to do so if Guzman refused to apologize or express any contrition for the crime.

Leon testified at the trial that he armed himself with a gun for the confrontation because he knew Guzman typically carried a knife and was prone to violence. Under those circumstances, the jury could reasonably infer that Leon had planned for two possibilities: either Guzman would acknowledge fault for the robbery and offer to make amends, or the confrontation would devolve into violence. The jury could also infer that Leon goaded Guzman into a violent reaction, and when he succeeded, Leon made a deliberate decision to shoot the unremorseful Guzman rather than to retreat. Those inferences are sufficient to support the verdict of premeditated murder.

The Attorney General concedes Leon's second point, and we agree it has merit. In January 2018, the Legislature amended Penal Code section 12022.53¹ to give the trial courts discretion to strike or dismiss a firearm enhancement previously required to be imposed under that section. (§ 12022.53, subd. (h).) Such a statute, which lessens the penalty for a crime, must be applied retroactively to all cases not yet final at the time the statute takes effect.

We consequently reverse the sentence and remand the case to the trial court for the limited purpose of allowing the court to exercise its discretion under section 12022.53, subdivision (h).

FACTS

Leon's and Guzman's families lived in the same neighborhood, and the two men had known each other since approximately 2004. They were not close, however, as Guzman was several years older. Leon moved out of his parents' house when he got married in 2005, but at the time of the shooting in April 2015, he was living less than two blocks away.

In January 2015, Guzman began dating Leon's sister, Lorena Reynero. When they began dating, Reynero lived with her parents, while Guzman lived across the street in a motorhome on his aunt's property. Reynero's parents disapproved of her relationship with Guzman; she nonetheless later moved into the motorhome with him. Neither Guzman nor Reynero were allowed to be at Reynero's parents' home.

Reynero and Guzman used methamphetamine together regularly. Both Leon and Reynero's parents were aware of the methamphetamine use. Leon was also aware that Guzman carried a folding pocket knife with a four to five inch blade.

¹ All further statutory references are to the Penal Code.

Three to four days before the shooting, Guzman and Reynero broke into her parents' house, and they stole tools that belonged to Leon. Reynero testified that she and Guzman sold one of Leon's tools on the street and pawned the rest.

On the day of the shooting Reynero confessed about the break-in to her mother. Her father then called Leon and told him about the theft of his tools. Leon's father offered to reimburse him for the stolen tools, but Leon refused the offer.

When Leon's father called him, Leon was changing the brakes on his motorcycle. He had already used both heroin and methadone. He stated he used methadone daily "to stay away from the heroin." After the phone call, Leon completed the brake job. He then went "to go look for [Reynero] to go see what had happened with those tools." Leon was aware that Reynero and Guzman had broken into his parents' home in the past without taking anything, but because they had stolen property this time he was upset and "wanted it to stop." He also hoped to get his tools back.

Leon took his gun with him to confront Reynero and Guzman because he believed they "were already acting" irrationally, and he was "afraid of confronting [Guzman]" due to "his size" and the fact "he potentially could be violent." Leon elected to confront Guzman because he believed it was Guzman, rather than Reynero, who had pried open the security bars to enter his parents' house since he felt "a woman couldn't have done it."

Guzman and Reynero spent the morning and early afternoon of April 8 smoking methamphetamine together. When Leon arrived unannounced in the early afternoon, they were drinking beer in the backyard of Guzman's aunt's house. Leon deliberately parked his motorcycle at the end of the block because he was concerned Reynero would recognize the sound of its exhaust and that she and Guzman would hide from him.

When Leon arrived, he called out to Reynero and she went to meet him. Leon berated her for breaking into their parents' home and stealing the tools, and she responded flippantly—asking him why the tools mattered since he had not paid for them. Leon was upset that she “blew [him] off,” and he asked to speak with Guzman. Leon said he was not willing to just leave because he “wanted an answer to where those tools were at.”

Reynero went into the backyard, and after some delay, Guzman came out. Guzman walked quickly past Leon without stopping which required Leon to turn and start walking with him. Leon demanded an explanation for the break-in; he accused Guzman of “disrespecting the house.” Guzman repeatedly denied responsibility, claiming he had just done what Reynero had told him to do. His lack of contrition upset Leon.

Guzman appeared angered by Leon's remark, and the two of them stopped walking. Although Leon denied he had been angry with Guzman when he arrived at Guzman's aunt's home, he acknowledged he was “a little mad” by the time they stopped walking. Leon then demanded that Guzman tell him “where the fuck were the tools” and insisted he “wanted the tools back.” Guzman replied, “Fuck your tools, fuck you and your dad. If I want to go into the house and take them, I'll take them. Who is going to stop me?”

Leon then told Guzman that if he and Reynero were going to continue using methamphetamine (i.e., “smoke themselves retarded”), it would not be at the expense of Leon's family, and he warned Guzman “to stay the fuck out of the property.” Guzman's response was “You're dead, motherfucker.”

Guzman then turned away and as he put his beer down; Leon could not see his hands for a few seconds. As Guzman turned back to face Leon, Leon pulled his gun from his pocket and shot Guzman four times. Leon did not see anything in Guzman's

hands before shooting him, but later claimed he thought Guzman was reaching for a knife.²

After Leon shot Guzman, he walked across the street and then began to run. He testified that he threw his jacket which had the gun in its pocket as he ran; an officer later found the jacket and the gun in a trash can. Leon then encountered a pair of utility workers with a truck. He asked them for a ride. When the driver refused, Leon forced his way into the truck's passenger seat. The driver gave him a short ride to his apartment.

Leon then got into his own car and drove to his aunt's home in Mexico where he stayed for three days. He was arrested in Mexico, although he claimed he had already decided to return to the United States by the time of his arrest.

After being shot, Guzman was able to get up and stagger back towards his motorhome where he collapsed. He was later transported to the hospital, where he died. Testing revealed Guzman had a significant amount of methamphetamine in his system at the time of his death. Although the amount of methamphetamine was enough to kill a person who was not a regular user, the drug did not contribute to Guzman's death.

Following his conviction, Leon was sentenced to 25 years to life for first degree murder, plus a consecutive term of 25 years to life for intentionally discharging a firearm causing death (§ 1202.53, subd. (d)), for a combined term of 50 years to life.

DISCUSSION

Leon's sole challenge to his conviction is his claim that the evidence was insufficient to support the jury's finding that he premeditated Guzman's murder. He points out the prosecutor never claimed the evidence demonstrated Leon had decided to kill Guzman when he went to confront him. Leon argues the video evidence

² Most of the confrontation between Leon and Guzman was captured on video by a neighbor's two surveillance cameras. The footage, which included no audio, was consolidated into a single video that was admitted into evidence at trial.

demonstrates he shot Guzman because he felt threatened—i.e., “only in response to the much larger Guzman gesturing with his arms, putting down his beer and demonstrating an intent to take some action against [Leon].” He also suggests that because he never admitted any intent to kill Guzman, and “this was not an execution-style shooting,” the evidence of premeditation was “mere speculation.” We disagree.

1. *Sufficiency of the Evidence Standard*

“Our task in deciding a challenge to the sufficiency of the evidence is a well-established one. ‘[W]e review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.’” (*People v. Solomon* (2010) 49 Cal.4th 792, 811.)

In doing so, “‘the appellate court presumes in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.’ [Citation.] This standard applies whether direct or circumstantial evidence is involved. ‘Although it is the jury’s duty to acquit a defendant if it finds the circumstantial evidence susceptible of two reasonable interpretations, one of which suggests guilt and the other innocence, it is the jury, not the appellate court that must be convinced of the defendant’s guilt beyond a reasonable doubt. [Citation.] “‘If the circumstances reasonably justify the trier of fact’s findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment.’””” (*People v. Catlin* (2001) 26 Cal.4th 81, 139.)

2. *Evidence of Premeditation*

As explained in *People v. Koontz* (2002) 27 Cal.4th 1041, 1080, “[a] verdict of deliberate and premeditated first degree murder requires more than a showing

of intent to kill. [Citation.] ‘Deliberation’ refers to careful weighing of considerations in forming a course of action; ‘premeditation’ means thought over in advance.”

But that careful weighing of considerations need not consume any specific amount of time. “‘Premeditation and deliberation can occur in a brief interval. ‘The test is not time, but reflection. ‘Thoughts may follow each other with great rapidity and cold, calculated judgment may be arrived at quickly.’”” (*People v. Sanchez* (2001) 26 Cal.4th 834, 849.)

People v. Brady (2010) 50 Cal.4th 547 (*Brady*) illustrates the speed at which a defendant can premeditate a murder. In *Brady*, the defendant shot a police officer just minutes after the officer first shined his patrol vehicle’s spotlight on his car to initiate what appeared to be a routine traffic stop. In rejecting the argument that there was insufficient evidence of a pre-existing motive or deliberation, the Supreme Court concluded that “[a] rational trier of fact could have concluded defendant, knowing he illegally possessed a firearm, rapidly and coldly formed the idea to kill [the officer] during the course of these events, and therefore acted after a period of reflection rather than on an unconsidered or rash impulse.” (*Id.* at pp. 563-564.)

In this case, the prosecutor acknowledged that Leon may not have had a preconceived plan to kill Guzman when he arrived to confront him about his participation in the break-in and robbery at Leon’s parents’ home. Rather, the prosecutor contended Leon “went there armed with a gun and he was angry and he was ready to kill Paul Guzman if he felt it was appropriate to do so.” Although Leon contends this amounts to a concession that he had “armed himself for self-defense and did not have a preconceived plan to shoot,” such a flexible approach to a potential killing has already been found by our Supreme Court to provide sufficient evidence of premeditation. (See *People v. Millwee* (1998) 18 Cal.4th 96 (*Millwee*).)

In *Millwee*, the defendant arrived at his mother's home unarmed with the intent to commit a robbery. However, when he encountered his mother at home, he took a rifle that he knew was kept in the home and shot her. The Supreme Court found sufficient evidence the defendant had premeditated the murder of his mother in the moments before he shot her, noting he "had ample opportunity while traveling up the hill and retrieving the gun to consider whether and how to use lethal force in order to remove property from the house." (*Id.* at pp. 134-135.)

The parallels between *Millwee* and this case are apparent. Both involve a defendant who may not have definitively decided to commit murder when he arrived on the scene, but who had ample opportunity to fully consider his options and plan for how to react if events did not go as he planned. In this case, Leon concedes his goals in confronting Guzman were to get his tools back and get some sort of assurance there would be no more break-ins at his parents' home. He understood that Guzman's likely reaction to these demands was unpredictable. Leon admits he took his loaded gun because he thought he would need it if Guzman became angry. Those facts suggest Leon had "consider[ed] whether and how to use lethal force" in navigating his meeting with Guzman. (*Id.* at p. 135.)

The evidence further suggests that Leon, who admits he became angry when Guzman refused to accept any responsibility, goaded Guzman into violence when he demanded Guzman tell him "where the fuck were the tools" and that he got even more angry when Guzman's reply was "Fuck your tools, fuck you and your dad. If I want to go into the house and take them, I'll take them. Who is going to stop me?"

At that point, it became clear Leon would not achieve any of his peaceful goals. He made no effort to back off. Instead, he insulted Guzman for his methamphetamine habit and aggressively warned him again to stay off his parents' property. When Guzman reacted by appearing to prepare himself to fight—turning away,

putting his beer down, turning back—Leon shot Guzman at point blank range. No evidence suggested that Guzman was armed with any sort of weapon when he was shot.

Those facts are sufficient to support the inference that Leon had formed the deliberate plan—whether before he arrived to confront Guzman, or in the minutes leading up to the shooting—to kill Guzman if he did not promise to stop “disrespecting the house” or otherwise apologize for his past conduct and that he would rely on Guzman’s temper as his justification.

3. *Exercise of Discretion in Dismissing Firearm Enhancement*

Leon also contends his sentence must be reversed because at the time his sentence was imposed in April 2017, section 12022.53, subdivision (d), mandated that any defendant, convicted of certain crimes (including murder and attempted murder), who personally and intentionally discharged a firearm and proximately caused great bodily injury or death, would be punished by an additional and consecutive term of 25 years to life. (§ 12022.53, subds. (a)(1) & (18) & (d).) Indeed, subdivision (h) of former Penal Code section 12022.53 specified that “Notwithstanding Section 1385 or any other provision of law, the court shall not strike an allegation under this section or a finding bringing a person within the provisions of this section.” The trial court therefore sentenced Leon to 25 years to life for the first degree murder, plus an additional and consecutive term of 25 years to life for his use of a firearm in committing the murder.

However, in January 2018, section 12022.53, subdivision (h), was amended to read: “The court may, in the interest of justice pursuant to Section 1385 and at the time of sentencing, strike or dismiss an enhancement otherwise required to be imposed by this section. The authority provided by this subdivision applies to any resentencing that may occur pursuant to any other law.”

Leon contends that the rationale of *In re Estrada* (1965) 63 Cal.2d 740 (*Estrada*) and *People v. Francis* (1969) 71 Cal.2d 66 (*Francis*), mandates the retroactive application of that discretionary dismissal rule to this case. The Attorney General concedes the point and we also agree.

In *Estrada*, the Supreme Court concluded that “[w]hen the Legislature amends a statute so as to lessen the punishment it has obviously expressly determined that its former penalty was too severe and that a lighter punishment is proper as punishment for the commission of the prohibited act.” (*Estrada, supra*, 63 Cal.2d at p. 745.) Because the Legislature has determined that the new punishment is sufficient in all cases, “[i]t is an inevitable inference that the Legislature must have intended that the new statute imposing the new lighter penalty now deemed to be sufficient should apply to every case to which it constitutionally could apply.” (*Ibid.*)

In *Francis*, which came three years after *Estrada*, the court applied the same rule in a case where the amendment of a sentencing statute did not actually change the applicable penalty, but instead gave the trial court discretion to choose between two options. (*Francis, supra*, 71 Cal.2d at p. 76.) Other courts have already concluded that under the *Estrada/Francis* rule, the amendment to section 12022.53 must be given retroactive effect to all cases not yet final on appeal. (See *People v. Robbins* (2018) 19 Cal.App.5th 660, 678; *People v. Woods* (2018) 19 Cal.App.5th 1080; and *People v. Arredondo* (2018) 21 Cal.App.5th 493.) We agree.

DISPOSITION

Leon’s sentence is reversed, and the case is remanded to the trial court with directions to exercise its discretion in determining whether to strike or dismiss Leon’s firearm enhancement under section 12022.53, subdivision (h). If the trial court elects not to strike or dismiss the firearm enhancement, then it is directed to resentence Leon for the firearm enhancement. (§ 12022.53, subd. (d).) The trial court is directed to prepare an

amended abstract of judgment and forward a certified copy to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

GOETHALS, J.

WE CONCUR:

IKOLA, ACTING P. J.

THOMPSON, J.